

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

BRIAN BONNER, a minor, by and)	
Through his mother and next friend,)	
OWENA KNOWLES,)	
)	
Plaintiff,)	CASE NO.:
)	3:06-CV-00715-MHT
v.)	
)	
PAWN CITY, INC.; INTERSTATE)	
ARMS CORPORATION; NORINCO)	
a/k/a CHINA NORTH INDUSTRIES)	
COPORATION, et al.,)	
)	
Defendants.)	

MOTION FOR PERMISSION TO AMEND ANSWER

COMES NOW one of the defendants, Interstate Arms Corporation, pursuant to the Court's Uniform Scheduling Order of September 11, 2006 and respectfully moves the Court for permission to amend its Answer to the Complaint to assert a Crossclaim against co-defendant China North Industries Corp. ("Norinco"). In support thereof, Interstate Arms would show the Court as follows:

1. Plaintiff asserts a products liability claim against the defendants alleging that a defective shotgun injured him. Interstate Arms is alleged to be a distributor of that shotgun. Interstate Arms in its Answer to the Complaint asserted the affirmative defense of lack of causal relation as it was merely a pass-through distributor.

2. Interstate Arms is entitled to indemnification and contribution from Norinco – the former's liability being purely passive, technical and constructive – under the laws of the states of Alabama, California, or Massachusetts, or such other state or Federal laws as may be appropriate.

3. Judicial economy would be served by permitting this claim to be asserted in this action.

4. As Norinco has just appeared in the case, it will not be prejudiced, nor will the case be delayed due to the addition of this Crossclaim.

5. “[L]eave shall be freely given when justice so requires.” Fed. R. Civ. P. 15(a). Indeed, Rule 15 “evinces a bias in favor of granting leave to amend.” *Chitimacha Tribe of Louisiana v. Harry L. Laws Co.*, 690 F. 2d 1157, 1163 (5th Cir. 1982).

WHEREFORE, the foregoing considered, Interstate Arms requests the Court for permission to amend its Answer to assert a Crossclaim against Norinco. Attached hereto as Exhibit A is the proposed Amendment to the Answer with Crossclaim.

Respectfully submitted,

/s/Todd M. Higey
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CERTIFICATE OF SERVICE

I hereby certify that on December 1, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the persons listed below:

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/s/Todd M. Higey
Of Counsel

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

BRIAN BONNER, a minor, by and
Through his mother and next friend,
OWENA KNOWLES,

Plaintiff,

v.

PAWN CITY, INC.; INTERSTATE
ARMS CORPORATION; NORINCO
a/k/a CHINA NORTH INDUSTRIES
COPORATION, et al.,

Defendants.

CASE NO.:
3:06-CV-00715-MHT

MOTION FOR PERMISSION TO AMEND ANSWER

Exhibit A

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ARMS CORPORATION; NORINCO)	
a/k/a CHINA NORTH INDUSTRIES)	
COPORATION, et al.,)	
)	
Defendants.)	

SECOND
AMENDMENT TO ANSWER,
ASSERTING CROSSCLAIM

COMES NOW one of the defendants, Interstate Arms Corporation, pursuant to Rules 13(g) and 15(a) of the Federal Rules of Civil Procedure, and amends its Answer to the Complaint to assert a Crossclaim against defendant, China North Industries Corp. ("Norinco") as follows:

1. Interstate Arms hereby adopts and incorporates by this reference as if fully set forth herein its Answer to the Complaint, including all denials and affirmative defenses, as well as its first Amendment to its Answer, including all denials and affirmative defenses.

COUNT ONE – INDEMNITY

2. Plaintiff alleges that Interstate Arms distributed a shotgun, that this shotgun was defective, and that plaintiff was injured as a consequence of this defect.

3. Interstate Arms, a Massachusetts corporation, purchased the shotgun from Norinco; said sale occurred in California. Interstate Arms then sold the gun to Langley Gun Shop, the retailer, in Alabama.

4. Interstate Arms was merely a pass-through distributor that sold the shotgun to a retail seller in a sealed package; that is, there is a lack of causal relation between any alleged defect in the product and plaintiff's injury on the one hand and the conduct of Interstate Arms on the other.

5. Accordingly, any liability on the part of Interstate Arms is purely passive, technical, and constructive.

6. The conduct of Norinco is the active and efficient cause of any alleged defect in the shotgun.

7. Therefore, Interstate Arms is entitled to statutory, equitable, implied or common law indemnification from Norinco under the laws of the states of Alabama, California, Massachusetts, or such other state or Federal laws as may be appropriate, for any amounts for which it may be found liable to plaintiff.

WHEREFORE, premises considered, Interstate Arms demands judgment against cross-defendant Norinco for any and all sums of money for which it shall be held liable to the plaintiff, as well as for attorneys' fees, expenses and costs and such other and further relief to which it is entitled.

COUNT TWO – CONTRIBUTION

8. Interstate Arms is entitled to contribution from Norinco under the laws of the states of California, Massachusetts, or such other state or Federal laws as may be appropriate, for any amounts for which it may be found liable to plaintiff.

WHEREFORE, premises considered, Interstate Arms demands judgment against cross-defendant Norinco for any and all sums of money for which it shall be held liable to plaintiff, as well as for attorneys' fees, expenses and costs and such other and further relief to which it is entitled.

Respectfully submitted,

/s/Todd M. Higey
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